

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ALVIN LEE ANDREWS, ET AL.	§	
v.	§	CIVIL ACTION NO. 6:16cv96
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION	§ §	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiffs Willie Howard Andrews and Alvin Lee Andrews filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of their constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Alvin Andrews was ordered to submit a certified inmate trust account data sheet in support of his application for leave to proceed *in forma pauperis*, as required by 28 U.S.C. §1915(b), but failed to do so. The Magistrate Judge issued a Report recommending that Alvin Andrews' claims be dismissed without prejudice for failure to prosecute or to obey an order of the Court, and Andrews did not object; accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

Willie Andrews complained that he received prison disciplinary action for the same conduct for which he received additional criminal charges, claiming that this amounted to double jeopardy. He also complained that he was denied due process because he received consecutive sentences.

The Magistrate Judge determined that Willie Andrews' allegations lacked any arguable basis in law and failed to state a claim upon which relief may be granted, and that these claims should therefore be dismissed as frivolous and for failure to state a claim. A copy of this Report was sent to Andrews at his last known address, return receipt requested, but no objections have been received; accordingly, Willie Andrews is also barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass*, 79 F.3d at 1430.

The Court has reviewed the pleadings in this cause and the Reports of the Magistrate Judge. Upon such review, the Court has determined that the Reports of the Magistrate Judge are correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the Reports of the Magistrate Judge (docket no.'s 11 and 13) are **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the claims of the Plaintiff Alvin Andrews are **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. It is further

ORDERED that the claims of the Plaintiff Willie Andrews are **DISMISSED WITH PREJUDICE** for purposes of proceeding *in forma pauperis* as frivolous and for failure to state a claim upon which relief may be granted. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this **17** day of **November, 2016**.

A handwritten signature in black ink, appearing to read "Ron Clark", is positioned above a horizontal line.

Ron Clark, United States District Judge